IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

RAMA V. THE STATE OF RAJASTHAN AND OTHERS.

S.B.CIVIL WRIT PETITION NO.2876/2002.
Under Article 226 of the Constitution of India.

DATE OF ORDER: 2.5.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Tribhuvan Gupta, for Petitioner.
Mrs.Vidyawat Bora, Assistant Government Advocate, for the State of Rajasthan - Respondents.

BY THE COURT:

Reportable

The instant petition has been filed by the petitioner – a visually handicapped person, praying therein that the impugned order dated 31.12.1997 (Annexure P/6) may be quashed and set aside and the respondents may be directed to take him back on duty with all consequential benefits.

The facts giving rise to the instant petition are that the petitioner is a visually handicapped person, i.e., completely blind, but he is not blind by birth, but he became blind during the course of employment in October – November, 1997. The case of the petitioner

falls within the definition of Handicapped Person, as per the Persons With Disabilities (Equal Opportunities etc.) Act, 1995 (hereinafter referred to as 'the Act, 1995'). A Certificate to this effect dated 12.11.1997 (Annexure P/1) has also been issued by the Senior Specialist (Eyes) under the Rajasthan Employment of the Physically Handicapped Rules, 1976 (hereinafter referred to as 'the Rules,1976').

The petitioner joined the service with the Respondents – Forest Department on 1.4.1983, as daily wage employee and since then, he has been working with the respondents as Cattle Guard. On 1.4.1986, he was declared semi-permanent by the Respondents. The petitioner is not having any appointment order etc., but he is having two photo stat copies of the Seniority List prepared by the respondents at the level of the Deputy Conservator of Forest, Udaipur (South), which shows his date of birth, his date of appointment, his seniority, experience, education, post and place of posting etc. Partial photo stat copies of the provisional Seniority Lists are dated 29.8.1989 (Annexure P/2) and dated 10.12.19990 (Annexure P/3) respectively.

The petitioner moved an application dated 24.10.1997 (Annexure P/4) for medical leave stating therein that due to eye problem, he has to go for treatment in Udaipur hospital and that is why, leave may be sanctioned for 25.10.1997, 27.10.1997 to 29.10.1997 respectively. He also sought permission to avail of three days Gazetted leave dated 26.10.1997, 30.10.1997 and 31.10.1997, respectively along with the permission to leave Headquarters from the evening of 24.10.1997. This application was signed by the petitioner

himself, as on that date, he was not completely blind. The petitioner remained hospitalized in the General hospital, Udaipur from 25.10.1997 to 10.11.1997 for treatment of his eyes. But, due to misfortune, the petitioner could not gain eye-sight and he became absolute blind. In this regard, Certificate No.10938 dated 12.11.1997 (Annexure P/5) for medical leave/absent was issued by the General hospital, Udaipur.

Thereafter, when he was discharged from the hospital, he joined the duties with the Respondents along with the above Certificate dated 12.11.1997 (Annexure P/5). But Respondent No.2 passed an order dated 31.12.1997 (Annexure P/6), by which, the services of the petitioner were terminated and he was ordered to be discharged from the afternoon of 25.10.1997.

Being aggrieved by the impugned order dated 31.12.1997 (Annexure P/6), the petitioner has filed the instant petition.

It is submitted by the learned counsel that the petitioner belongs to Scheduled Tribe, he is a blind man and he is not in a position to move freely, so, he has to depend on some-one. He knocked each and every door of the concerned officers, public person, i.e., Panch, Sarpanch, M.L.A. Etc. , time and again to resolve his grievance. Some applications were written on his behalf and he made his thumb impressions on the applications for resolving his grievance. But nothing has been done and no response to the petitioner's representation (Annexure P/7) was given by the Authorities, although one order for payment of G.P.F. Amount was

issued.

It is further submitted by the learned counsel for the petitioner that as per Section 47 of the Act, 1995, no establishment shall dispense with or reduce in rank, an employee who acquired disability during his service, neither promotion can be denied, nor he can be removed from the service, till the age of superannuation . If the suitable post is not available, then he has to be kept on a supernumerary post.

It will be relevant to quote Section 47 of the Act, 1995, which reads as under :-

"47. Non-discrimination in Government employment :-

(1)No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2)No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notifications, exempt any establishment from the provisions of this Section."

Similarly, Section 2 (b), (i), (k) and (t) of the Act,1995 also reads as under :-

" **Section 2 Definitions. In this Act, unless the context otherwise requires :-**

(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely :-

(i)total absence of sight; or
(ii)visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or
(iii)limitation of the field of vision subtending an angle of 20 degrees or worse;

(I)"disability" means -
(i)blindness;

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government.

(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;"

A bare perusal of the aforesaid Sections shows that the impugned order of discharge from service dated 31.12.1997 (Annexure P/6) has been passed against the provisions of the Act, 1995.

It is also submitted by the learned counsel for the petitioner that prior to termination from the service, the petitioner was not given any notice, nor any enquiry was conducted, nor he was terminated on the ground of any misconduct. He was solely terminated on the ground that he has become blind Thus, according to the learned counsel, the termination order is against the principle of service jurisprudence and is in violation of Article 311 of the Constitution of India, as well as in violation of the principles of natural justice.

It is contended by the learned counsel for the petitioner that on 25.10.1997, the petitioner was on duty and he himself submitted an

application for medical leave by signing it and after loosing complete vision during the treatment, reported for duty on 12.11.997. Thus, he cannot be terminated on the above ground w.e.f. 25.10.1997. He never submitted any application for retirement. Even for the sake of argument, if it is assumed that his termination was justified, then also, he should be granted all retirement benefits for the last 14 years or invalid pension and short of financial support. Even in the pension rules, there is a provision for grant of invalid pension for those persons who got the disability during the course of employment.

In support of his contentions, learned counsel for the petitioner has relied on the case of National Federation of Blind v. U.P.S.C. & Others (AIR 1993 SC 1916), Anand Bihari & Others v. Rajasthan State Road Transport Corporation, Jaipur (1991) 1 SCC 731, Rameshwar Dass & Others v. State of Haryana and Others (1995) 3 SCC 285, Kunal Singh v. Union of India & Another (2003) 4 SCC 524 and Union of India v. Sanjay Kumar Jain (2004) 6 SCC 708.

On the other hand, it is submitted by the learned counsel for the respondents that sofar as visually handicappedness of the petitioner is concerned, the blindness has not occurred during the course of employment while discharging duties on the post of Cattle Guard. Apart from that, the petitioner has not applied for medical leave, as is evident from Annexure P/4, but he has applied for casual leave for four days, i.e., 25.10.97, 27.10.97, 28.10.97 and 29.10.97 respectively, with permission to avail of Gazetted holidays falling on 26.10.97, 30.10.97 and 31.10.97 and leave Headquarters from the evening of

24.10.97.

It is further submitted by the learned counsel for the respondents that the Medical Certificate dated 12.11.1997(Annexure P/5), shows that the petitioner remained indoor patient in the General Hospital, Udaipur from 25.10.97 to 10.11.97, whereas, according to Annexure P/1, the petitioner was examined by the concerned Doctor on 11.10.1997 and he was found blind in both the eyes.

It is also submitted by the learned counsel for the respondents that the petitioner himself has moved an application dated 11.11.1997 (Annexure R/1) to the Deputy Conservator of Forest, Udaipur, menioning therein that he has become completely blind with effect from 25.10.1997 and he reamined on medical treatment at Udaipur, but he could not improve the vision of the eyes and now, he has become completely blind, therefore, he may be given the consequential benefits and his son may be taken in the job, in his place. Thus, in this view of the matter, the impugned order dated 31.12.97 (Annexure P/6), in accordance with Chapter 3 (10) (4) of the Work Charge Employees' Standing Orders, was passed and he was discharged from service with effect from 25.10.97, as the has lost his vision and has become completely blind w.e.f. 25.10.97.

It is contended by the learned counsel for the respondents that the petitioner has already received G.P.F. Amount of Rs.65,884/- on 10.5.1999 and, vide Annexure P/7 he has requested for pension relief. The petitioner has also submitted an application dated 9.9.2002 (Annexure R/3), requesting the Deputy Conservator of Forest,

Udaipur, for grant of pension. Apart from that the service conditions of the petitioner are governed by the Standing Orders of the Forest Department, 1973. The petitioner is not a permanent employee of the Forest Department, he is a semi-permanent Cattle Guard, so, according to the learned counsel, the provisions of the Rajasthan Service Rules and the provisions of Section 47 of the Act,1995 are also not applicable to him.

Heard learned counsel for the parties.

It is admitted position that on 24.10.1997, the petitioner moved an application for treatment of his eyes and sought leave for 25.10.1997, 27.10.1997 to 29.10.1997 respectively. He also sought permission to avail of three days Gazetted leave dated 26.10.1997, 30.10.1997 and 31.10.1997, respectively. Not only that, but also, he put his signature as "Rama" on the aforesaid application for leave, as is evident from Annexure P/4. It is also admitted position that the petitioner remained hospitalized in the General hospital, Udaipur from 25.10.1997 to 10.11.1997 and received the treatment of his eyes, during that period, as is evident from Annexure P/5. It is not in dispute that the petitioner was discharged from the service from the afternoon of 25.10.1997 by the order dated 31.12.1997, issued by the Deputy Conservator of Forest, Udaipur (South), as is evident from Annexure P/5. It is also not in dispute that the petitioner made a detailed representation (Annexure P/7), mentioning therein that when he remained hospitalised from 25.10.1997 to 10.11.1997 and remained on leave then, on what basis, the Deputy Conservator of

Forest, declared him blind on 25.10.1997

and discharged him from service from the afternoon of 25.10.1997, whereas he was issued the certificate of blindness by the Doctor of the General hospital, Udaipur on 12.11.1997. It is significant to note that how the Department came to know that he has become blind on 25.10.1997 and discharged him from the service from the afternoon of 25.10.1997 vide order dated 31.12.1997 (Annexure P/6), whereas the Certificate of blindness was issued by the Doctor of the General Hospital, Udaipur on 12.11.1997. It may be mentioned that in the peculiar facts and circumstances of the case, in order to take the benefit of his blindness and get rid of their own fault, the Department has got the application dated 11.11.1997 (Annexure R/1) written and got the thumb impression of the petitioner on it, which cannot be said to be a fair act on the part of the Department – Respondents. Sub-section (1) of Section 47 of the Act, 1995 provides that no establishment shall dispense with or reduce in rank, an employee who acquired a disability during his service. It further provided that if an employee, after acquiring disability, is not suitable for the post he was holding, be shifted to some other post with the same pay scale and service benefits. It also provided that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Apart from that, Respondent – State is a Welfare State and cannot go against the welfare policy. It is also significant to note that the petitioner belongs to the Scheduled

Tribe and his livelihood has been snatched/taken away, by taking the advantage of his blindness, in a well calculated manner. No doubt, the petitioner belongs to a weaker section of the Society. According to Article 46 of the Constitution of India, the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. A person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act, 1995. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. In other words, Section 47 casts statutory obligation on the employer to protect an employee acquiring disability during service.

The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life was felt for a long time. To realize the objective that people with disabilities

should have equal opportunities and keeping their hopes and aspirations in view, a meeting called the "Meet fo Launch the Asian and Pacific Decades of Disabled Persons" was held in Beijing in the first week of December, 1992 by the Asian and Pacific countries to ensure "full participation and equality of people with disabilities in the Asian and Pacific regions". This meeting was held by the Economic and Social Commission for Asia and Pacific. A proclamation was adopted in the said meeting. India was a signatory to the said proclamation and agreed to give effect to the same. Pursuant thereto, this Act was enacted. The Act provides some sort of succour to the disabled persons.

Thus, in view of the aforesaid discussions, the contentions of the learned counsel for the respondents are not sustainable.

Consequently, the writ petition is allowed. The impugned order dated 31.12.1997 (Annexure P/6) is quashed and set aside. The respondents are directed to take the petitioner back in service within a period of one month from the date of submission of a certified copy of this order by the petitioner. The petitioner shall be given notional benefits of the service-period from the date he was discharged from the service vide order dated 31.12.1997 (Annexure P/6), till he is re-instated back in service. If any amount of post-retiral benefit, like GPF etc. has been given to the petitioner, the same shall be adjusted in accordance with Rules. He will be given the benefit of regular pay scale from the date he is re-instated back in service. The petitioner shall be deemed to have been continued in service as if he had not been

retired/discharged from service in pursuance to order dated 31.12.1997 (Annexure P/6).

There will be no order as to costs.

(R.P.VYAS), J.

S.C.Dave
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